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## **The administrative structure of Silesia as a determinant of legal and constitutional cohesion (12<sup>th</sup>–15<sup>th</sup> century)**

### **Abstract:**

An analysis of crucial legal and systemic issues indicates that the most important aspect in the formation of Silesian regional cohesion was the ‘transformation’ that took place in the 13<sup>th</sup> century, including the reception of German law and the institution of the self-governing municipality. The main factor determining the functionality of administrative and judicial structures was the proceeding territorial fragmentation. In the 12<sup>th</sup> century the provincial *comites*, appointed by the *principes*, as well as the Bishops of Wrocław, performed the function of intermediaries between Silesia and the rest of the monarchy. After 1163, the Silesian dukes concentrated on the particular needs of their territorial dominions that were taking shape, and were sometimes also used as power bases for carrying out state-wide political concepts. Hence the initiatives undertaken for the purpose of consolidating the duchies in their administrative and economic dimensions, utilizing innovative socio-systemic mechanisms such as the establishment of new towns, construction of castles and administrative reforms of both the Castellans and Weichbilds, as well as the promotion of migration by foreign knights.

Yet another breakthrough took place when the Silesian duchies fell under either the direct or feudal dominion of the Bohemian Crown. Seeing as the House of Luxembourg was not interested in the creation of centralized institutions and did not interfere in internal relations between the duchies, institutional differences deepened. Unification policies took shape only within individual duchies, with the limitations of such policies and a focus on short-term solutions being evident. Attempts to make the administrative structures uniform were rare, which is especially evident in the context of incorporated areas. Rapid changes in the feudal fragmentation also proved a hindrance to unification activities. Remaining within a unified Church structure and single political organism was, however, a cohesive factor.

### **Keywords:**

medieval history, administrative structure, government of medieval Silesia

### **Duke, comes, bishop: 12<sup>th</sup>-century structures of administration**

During the early reign of the Piast dynasty, Silesia’s position on the political map of Poland was merely peripheral – as German medievalists had put it, the region was labelled as ‘remote from ruler’. 12<sup>th</sup>-century sources do not indicate any particular Piast influences on Silesian domestic policy; they instead focus on their military contributions during the wars with the Holy Roman Empire and Bohemia. The only believable account of a superior ruler’s sojourn in the province bearing no relation to any military activity is most probably the visit of *princeps* Boleslaus the Curly on the occasion of the consecration

ceremony of a monastic church at Ołbin in 1149.<sup>1</sup> What is more, the Piast dukes were not keen to engage in any large-scale construction investments within the province. It is worth noting that the two most important Church institutions of the Silesian capital until the last quarter of the 12<sup>th</sup> century – excluding the bishopric – were the monasteries of Benedictines and Regular Canons, and they were founded by magnates rather than dukes. A three-sided agreement signed between Gniezno, Cracow and Płock, the main power centres of the monarchy of Ladislaus Herman and Boleslaus the Wrymouth, slightly marginalized the importance of Wrocław. Nonetheless, the city was included in Gallus' list of '*sedes regni principales*', after Cracow and Sandomierz as the third capital of the southern district, bestowed on the young Boleslaus by his father. This seemingly peripheral and borderline – yet in military confrontations with Bohemia and the Reich somehow primary – position of Silesia in the first century of the so-called 'second Piast monarchy's' existence must have influenced its administrative structure, as well as the power of local governors and the consolidation of the local political community. It is probably no coincidence that 12<sup>th</sup>-century sources focus mainly on the governors of Silesia and Mazovia, the two provinces that were most vulnerable to outside attacks: the *voivodes* Magnus (who exercised power over both provinces), Żyro and – at the beginning of the 13<sup>th</sup> century – Krystyn. However, nothing definite can be said about the scope of their political and military power.

The *Chronicles of Gallus Anonymus*, containing a description of the dramatic events of the last decade of the 11<sup>th</sup> century, provide us with a unique perspective on the political structure of the province of Wrocław, governed by the *comes* Magnus. His sovereign power over the province, limited – as one would expect – as a rule only by the duke's will, was discredited, according to Gallus Anonymus, by Count Palatine Sieciech, who violated the accepted customs by appointing officials who were subordinate to himself rather than to Magnus. The superior status of the Wrocław governor was expressed by the title *dux* used in reference to Magnus by the chronicler, which in this case probably refers to a voivode, not a duke.<sup>2</sup> Magnus' decisions on the most crucial matters were, however, limited by the will of the local political community expressed at assemblies. Therefore we may say that, on a local scale, these political relations mirrored the three-sided system typical of early proto-parliamentarism: the *comes*/duke – the magnates – the assembled *populus*.<sup>3</sup> It is reasonable to suppose that the last of these three

<sup>1</sup> SUB., vol. 1, No. 19. Participation of sovereigns in the ceremonies of consecration of church buildings or their sections was an important element of political ideology at least from the times of the Ottonian rule.

<sup>2</sup> Proof that this was not merely Gallus' literary initiative is that the chronicler Wincenty Kadłubek also refers to Żyro as the Mazovian *comes*, see: Karol Modzelewski, *Comites, principes, nobiles. Struktura klasy panującej w świetle terminologii Anonima Galla*, [in:] *Cultus et cognitio. Studia z dziejów średniowiecznej kultury*, ed. Stefan K. Kuczyński, Warsaw 1976, pp. 403–412; controversial views on Magnus' Anglo-Saxon dynastic origins: Tomasz Jurek, *Kim był komes wrocławski Magnus?*, [in:] *Venerabiles, nobiles et honesti. Studia z dziejów społeczeństwa Polski średniowiecznej*, eds. Andrzej Radzimiński et al., Toruń 1997, pp. 181–192.

<sup>3</sup> A concise typology of the proto-parliamentary assemblies of the Early Middle Ages: Timothy Reuter, *Assembly politics in western Europe from eighth century to the twelfth*, [in:] *idem, Medieval Politics and Modern Mentalities*, Cambridge 2006, pp. 193–216.

aforementioned parties – composed of freemen – following the example of the Bohemian ‘*milites secundi ordinis*’ or of the Pomeranian warriors known from the *Life of Saint Otto of Bamberg*, did not constitute an independent political power in the 12<sup>th</sup> century, but adhered to the opinions and approved of the decisions made by the members of the magnate elite.

The two-level administrative structure of the extensive Piast monarchy, in which provinces, territorial units of a higher rank, existed alongside the castle wards, should be recognized as proven beyond a doubt.<sup>4</sup> Also, the view expressed by Janusz Bieniak seems plausible – he pointed to the analogical status of the provincial *comites* and the younger members of the Piast dynasty who, upon reaching an appropriate age, often inherited power over certain districts during their father’s lifetime. For this reason, the view that a new senior of the dynasty appointed his eldest son Boleslaus the Long as governor of the Silesian province as early as in 1138 seems reasonable.<sup>5</sup> Little is known, however, about the exact administrative and political structure of 12<sup>th</sup>-century Silesia. What is regarded by most scholars as the main source of controversy is the existence of the so-called March of Głogów. Mention of it can be found in both the chronicles of Wincenty Kadłubek, where it is described as the ‘share’ granted to Conrad, the youngest son of Ladislaus the Exile, and in a diploma issued by the Emperor Lotar III (1134) and presented in Merseburg, which mentions Henry *marchio Glogoviensis* as one of the witnesses among the Saxon and Bavarian magnates.<sup>6</sup> Despite the views expressed in Polish literature, it seems quite doubtful that Henry was actually a member of the local political elite. These doubts are justified by both his very name (German names were not used at that time by Polish magnates) and the fact that it is included in the list of witnesses of the imperial document issued for the Bishopric of Bamberg, where he is mentioned as one of the secular witnesses alongside Conrad Wettin, the Margrave of Meissen, and Dippold from Vohburg and Cham, the Margrave of Nordgau. Therefore, he either belonged to the Reich’s aristocracy or possessed dynastic origins. His kinship or affinity with the Piasts through the person of Salomea of Berg should be considered as the most likely, although here we should exclude her brother, Graf Henry II of Berg. What we assume to be most likely is the link between Margrave Henry and Salomea’s nephew – the son of her sister Richeza and Ladislaus I, the Duke of Bohemia. It was most probably he who received from his uncle the territory of Głogów as a benefice during his sojourn in Poland.<sup>7</sup>

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<sup>4</sup> Especially Tadeusz Lalik, *Organizacja grodowo – prowincjonalna w Polsce XI i początków XII wieku*, [in:] *idem, Studia średniowieczne*, Warsaw 2006, pp. 386–391.

<sup>5</sup> Janusz Bieniak, *Powstanie księstwa opolsko – raciborskiego jako wyraz przekształcania się Polski w dzielnicową poliarchię*, [in:] *Sacra Silentii provincia. 800 lat dziedzicznego księstwa opolskiego (1202–2002)*, ed. Anna Pobóg–Lenartowicz, Opole 2003, p. 53.

<sup>6</sup> SUB., vol. 1, No. 8, cf. Tadeusz Lalik, *Marchie w Polsce XII wieku*, ‘Kwartalnik Historyczny’, 73 (1966), pp. 818–824.

<sup>7</sup> An analogical solution was to grant the land of Kłodzko as a benefice to the young Boleslaus the Wrymouth by his uncle, the Duke of Bohemia Břetislaus II. Supporting the sons of Vladislaus I, the nephews

Tadeusz Lalik dates the separation of this administrative unit from the Silesian province to the years 1124–1134, and its demise to the beginning of the reign of Henry the Bearded. He also opined that the separation was caused mainly by military considerations. Even so, the issue remains cloudy. The very usage of the title *margrave*, found in two independent sources separated by several decades, suggests that the March of Głogów was a considerably durable administrative unit. It would be also reasonable to consider whether it was not *comes* Wojslaw, mentioned by Cosmas as *prefectus urbis Glogov*, who enjoyed the title of margrave before it was granted to Henry.<sup>8</sup> What distinguished the central position of Głogów on a regional scale was the establishment of a chapter, which had probably taken place as early as during the reign of Boleslaus the Wrymouth. This would make it one of the oldest ecclesiastical institution of its kind in Poland. If one acknowledges the views linking the foundation of the Głogów chapter with the person of Boleslaus the Wrymouth, or rather *comes* Wojslaw,<sup>9</sup> then one should also acknowledge the fact that Głogów achieved a status equal to that of other urban centres of Silesia and later shares of dukes, such as Sandomierz, Kalisz and Wiślica, as early as in the first quarter of the 12<sup>th</sup> century.<sup>10</sup> Another argument supporting views on the independent status of the Głogów province in the 12<sup>th</sup> century concerns its economic superiority (proven recently by Borys Paszkiewicz), which was manifested by the fact that as early as in the 13<sup>th</sup> century Głogów belonged to a separate monetary province, with the *denarius* as its currency, which naturally linked it more closely with Greater Poland than with the remaining lands of Silesia.<sup>11</sup>

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of the Duchess Salomea of Berg, as potential claimants to the Czech throne was in the interest of Wrymouth because of the ongoing conflict with the then ruler of Bohemia, Sobieslaus I.

<sup>8</sup> *Cosmae Cronica Boemorum*, p. 231.

<sup>9</sup> Tomasz Jurek, *Kto i kiedy ufundował kolegiatę głogowską*, 'Sobótka', 49 (1994), No. 1/2, pp. 21–35, in an otherwise convincing analysis of sources showed that the information about the early foundation of the collegiate comes from a presently missing note from Głogów. However, what raises doubts is the view that the first one to attribute the famous foundation act to Wojslaw was the 16<sup>th</sup> century writer of annals, whereas the name of the founder mentioned in the note does not include the word '*dux*' – implying Boleslaus the Wrymouth. If a 12<sup>th</sup>-century note had actually been composed this way, it would not have performed its basic commemorative function. That is why we presume that if we indeed want to acknowledge the existence of such an early-dated note of the collegiate's foundation, we need to establish that it contained the name Wojslaw together with the title *dux*. Analogous is the ducal title (or rather the voivode title) of the Wrocław *comes* Magnus, found in Gallus' chronicles.

<sup>10</sup> Similar Bohemian examples prove clearly that both in the 11<sup>th</sup> century and at the outset of the 12<sup>th</sup> century the chapters were founded mainly in significant administrative and political centres (Wyszehrad, Litomierzyce, Sadska) and in the seats of duchies (Mělník). On the foundation of the collegiate see Tadeusz Lalik, *Początki kolegiaty głogowskiej*, [in:] *Ze studiów nad średniowiecznym Głogowem i Krosnem*, Zielona Góra 1970, pp. 63–73; Henryk Gerlic, *Kapituła głogowska w dobie piastowskiej i jagiellońskiej (1120–1526)*, Gliwice 1993, pp. 14–22; excavations in the area of the Gothic collegiate church revealed the existence of a small Roman temple constructed in two stages, identified with the 12<sup>th</sup>-century castle church, cf. Olgierd Czerner, *Badania kolegiaty w Głogowie*, [in:] *Osadnictwo i architektura ziem polskich w dobie zjazdu gnieźnieńskiego*, eds. Andrzej Buko, Zygmunt Świechowski, Warszawa 2000, pp. 355–358.

<sup>11</sup> Borys Paszkiewicz, *Początki mennisztwa głogowskiego*, [in:] *Głogovia Maior. Wielki Głogów między blaskiem dziejów a cieniem ruin*, eds Bogusław Czechowicz, Małgorzata Konopnicka, Głogów – Zielona Góra 2010, pp. 65–66.

Imprecise and unclear terminology does not make it easier to inquire about the status of particular castle centres and forms of their management in the 12<sup>th</sup> and 13<sup>th</sup> centuries. It is rather difficult, for instance, to interpret the expression *potestas Legnicensis* as mentioned in the Lubiąż forgery based on which tithes were paid to the Lubiąż monastery by its founder.<sup>12</sup> It is hard to determine whether this term implies a ‘regular’ castle area (as claimed by Marta Młynarska-Kaletynowa), or a territorial unit of a higher rank, somehow comparable to the Wrocław province or the March of Głogów.<sup>13</sup> The status of Legnica, where Henry the Bearded had already erected a western European-style brick palatium, seems to be considerably greater than that of other castellan castles in 13<sup>th</sup>-century Silesia. The aforementioned premises lead us to presume that alongside the political community focused around the urban centre of Wrocław – whose existence is unquestionably proven by the chronicler Anonymous called Gallus – there might have existed analogous communities whose political and judicial centres were located in other important Silesian castles. The existence of those supra-local structures might have been legitimized by the still ephemeral 12<sup>th</sup>-century dynastic divisions. On the other hand, it could also have been the allocation of provinces that generated the formation of connected institutions. The insufficient number of sources and deduction *per analogiam* prevent us from finding a good answer to these questions.

## Castles and castellans

Another issue concerning the Piast kingdom on a global scale is the still-unsolved question of the genesis and function of castellanies. The scholarly consensus as to the formation of this basic administrative structure of the so-called second Piast monarchy in the second half of the 11<sup>th</sup> century was shattered by the ideas of Sławomir Gawlas, who sees the castellanies – in the context of 13<sup>th</sup>-century sources – as rather a product of the complex administrative-political reforms from the second half of the 12<sup>th</sup> and outset of the 13<sup>th</sup> centuries. Gawlas advocated the view earlier formulated by Marek Cetwiński, that the appearance of the title *castellanus* in Silesian sources is an indication of socio-political developments.<sup>14</sup> At the same time, he identified the first symptoms of the early stage of the process of feudalization of Silesian offices, claiming that in the 13<sup>th</sup> century these functioned as benefices, or castle fiefs. There is no doubt a castellany had existed before this period in Silesia – this is proven by both written records, such as the Papal Bull of Adrian IV from 1155, and material relics. Nonetheless, because of the scarcity of historical records from before the outset of the 13<sup>th</sup> century, it is difficult to define its fiscal, administrative and judicial functions. The study of these documents for relics of

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<sup>12</sup> S**U**b., vol. 1, No. 45.

<sup>13</sup> Marta Młynarska - Kaletynowa, *Potestas Legnicensis*, [in:] *Cultus et cognitio*, pp. 393–401.

<sup>14</sup> Marek Cetwiński, *Kasztelanie i kasztelanowie na Śląsku w XIII i XIV wieku*, [in:] *Studia z dziejów polskiego średniowiecza*, Częstochowa 2001 (first ed. 1989), pp. 255–275.

the territorial and tribal structure of Silesia in the pre-state period has proven rather fruitless, mainly because the archaeological dating of the majority of the castles generally indicates that they were raised mostly in the second half of the 10<sup>th</sup> century or at the outset of the 11<sup>th</sup> century.<sup>15</sup> The advances in recent decades made in archaeological research on early medieval castles, focusing mainly on centres of local importance in the earliest phase of their construction at the very outset of statehood, do not provide sufficient material to extend our knowledge of the vast range of social phenomena of the time. For instance, the discovery of a substantial amount of carbonized corn in the castle area points to two different scenarios: either the place was used to store food supplies collected from the population, or supplies were gathered there in the event of war and were funded from the assets of the sovereign magnate.<sup>16</sup> What should be emphasized here is the continuity of the government structure, which is best illustrated by the list of castle centres contained in two papal bulls for the Bishopric of Wrocław from 1155 and 1245:<sup>17</sup> twelve out of seventeen castles (including the individually mentioned Sądowel and Koźle) specified in the first bull also appeared in the second one. What is remarkable is that local names, most difficult to interpret unequivocally, were erased from the bull's text and replaced with the new centres of governance, the location of which raises no doubts.<sup>18</sup> On this basis it can be concluded that, besides extending the list of the castellanies controlled by the Bishop of Wrocław – the 1155 bull was evidently incomplete or included only the borderland centres (which would explain the omission of Wrocław, Opole and Legnica) – it is also possible to distinguish on this basis the existence of a process of petrification of the Silesian governance structure at the turn of 12<sup>th</sup> and 13<sup>th</sup> centuries; this does not, however, mean that in the latter period this structure did not undergo any transformations.<sup>19</sup> It is impossible to disagree with Sławomir Gawlas, who opined that ‘the office of castellan also must have evolved in the 13<sup>th</sup> century,’ and that ‘we must consider the *ad hoc* corrections of the centres’ networks and attempts at their reorganization according to a better-thought-out strategy’.<sup>20</sup>

Is it possible that the crucial reorganization of the administrative structure took place in the period between the dates of the two Wrocław bulls, at the close of the 12<sup>th</sup>

<sup>15</sup> Sławomir Moździoch, *Organizacja gospodarcza państwa wczesnopiastowskiego na Śląsku, Studium archeologiczne*, Wrocław 1990, pp. 48–50. The results of the author's later research in Bytom Odrzański and Ryczyna, based on dendrochronological dating, prove that those castles were elevated in 1080s, therefore it seems to be appropriate to associate them with the Piast conquest., see *idem*, *Castrum munitissimum Bytom*, pp. 184–189; Sławomir Moździoch, Magdalena Przysiężna-Pizarska, *Gród Recen – refugium episcopi*, [in:] *Milicz – Clavis Regni Poloniae. Gród na pograniczu*, ed. Justyna Kolenda, Wrocław 2008, pp. 249–252.

<sup>16</sup> See S. Moździoch, *Castrum munitissimum*, pp. 193–194.

<sup>17</sup> SUB., vol. 1, No. 28; SUB., vol. 2, ed. Winfried Irgang, Köln-Wien 1977, No. 287.

<sup>18</sup> In the bull from the year 1245 we do not find the castles *Gramolin*, *Godivice*, *Szobolezске* nor *Sezesko*.

<sup>19</sup> On the organization of the new districts in the 13<sup>th</sup> century: i.e., Marta Młynarska-Kaletynowa, *Z zagadnień zarządu terytorialnego Śląska w XIII wieku. na Ślęży, w Urazie i Oleśnicy*, ‘Archaeologia Historica Polona’, 15/2, 2005, pp. 125–137.

<sup>20</sup> Sławomir Gawlas, *O kształt zjednoczonego Królestwa. Niemieckie władztwo terytorialne a geneza społecznoustrojowej odrębności Polski*, Warsaw 1996, p. 74.

century? The point of departure for the concept of the management structure's reformation at the outset the 13<sup>th</sup> century is the fact that documents of Henry I the Bearded from the years 1202–1203 abound in references to officials of territorial management named *castellani*: in the diploma issued for the Monastery of Lubiąż we find that this title was given to Imbram Gniewomirowic, *castellan* of Ryczyn, and to Stefan, *castellan* of Żagań, who, on behalf of the duke, demarcated the goods bestowed upon the abbey. The list of witnesses includes the castellans of Lubusz, Żagań, Głogów, Bolesławiec, Legnica, Nowogród Bobrzański and Sądowel. The diploma awarded to the Cistercian nuns of Trzebnica (from the same year) extends the aforementioned list by the castellans of Bytom Odrzański, Bardo and Krosno Odrzańskie.<sup>21</sup> It is not difficult to notice that those dignitaries managed the western part of Henry's realm. In the remaining Silesian castles, including those located in the areas controlled by the Dukes of Racibórz and Opole, castellans appeared about two decades later. From then on we may say that the presence of dignitaries called castellans was permanent. That said, here also we encounter certain terminological inconsistencies as far as the Silesian dukes are concerned: they present the most numerous and most distinguished category of witnesses, which is illustrated by the fact that in Henry's diplomas their names appear before those of court officials.<sup>22</sup>

The interesting and credible concept presented by Sławomir Gawlas, based on comparative material from the area of the Reich, can therefore be neither easily refuted nor supported by other indigenous historical sources. It touches on the same methodological dilemmas as in the case of other historiographical debates on the political foundations of medieval Europe: the origin of the institution of the county and the competences of the Carolingian counts in the eastern part of the Frankish Empire in the 9<sup>th</sup> century.<sup>23</sup> The concept of redeveloping the administrative structure of Silesia at the outset of the 13<sup>th</sup> century is definitely more vivid in terms of social, legal and constitutional transformations than in the case of other districts of the Piast state. Numerous examples of the innovative policies of the Silesian dukes, i.e. supporting the migration of knights and settlers, establishing settlements under German law and introducing new types of defensive and residential stone architecture, make it appear likely that they modelled their approach on that of the burgrave administration in the imperial territories of Pleissenland and Eger, so

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<sup>21</sup> SUB., vol. 1, No. 83.

<sup>22</sup> Anna Doroszewska, *Otoczenie Henryka Brodatego i Jadwigi jako środowisko społeczne*, Warsaw 1978, pp. 27–30.

<sup>23</sup> For instance: the appearance of a substantial number of references to the Alemannic grafs in the Sangalensis documents issued during the reign of Ludwik Pobożny (the Pious) was explained by Michael Borgolte, (*Geschichte der Grafschaften Alemanniens in fränkischer Zeit*, Sigmaringen 1984 (=Vorträge und Forschungen, Sonderband vol. 31)) as a result of the extensive administrative reform in the first decades of the 9<sup>th</sup> century; whereas for his polemicist Hans K. Schulze (*Grundprobleme der Grafenschaftsverfassung. Kritische Bemerkungen zu einer Neuerscheinung*, 'Zeitschrift für Württembergische Landesgeschichte', 44 (1985), pp. 265–282) this was caused merely by the reform of the chancellery customs in Sankt Gallen.

well-known to the sons of Ladislaus the Exile.<sup>24</sup> This has to be interpreted as a drive to consolidate and improve control over the subordinate territory and to improve its economic exploitation. Despite the terminological controversy surrounding the interpretation of the word *beneficium* appearing in the Silesian sources, it is impossible to deny the essential role of castellans in forming the relations between dukes and the members of the political elite. It seems that the need to transform the relations between authorities so that the sovereign was obliged to grant ‘castra et populus ad regendum’ to his *fideles*, as articulated by Cosmas of Prague at the beginning of the 12<sup>th</sup> century, was also present in 13<sup>th</sup>-century political culture. Therefore, the existing ambivalent interpretations of the nature of the medieval administrative structure are not ruled out by the introduction of the notions of *beneficium* and *officium*, in accordance with Tomasz Jurek’s polemic against the aforementioned views of Cetwiński.<sup>25</sup> The 13<sup>th</sup>-century castellanies are both offices and benefices (understood as sharing the income and the authority of a ruler), granted to the members of the political elite. When one considers factors associated with the regional and supra-regional cohesion of Silesia in the Middle Ages, it is impossible not to take into account the role of the then elite of magnates as an essential political element. Most researchers share a view about the nationwide character of the 12<sup>th</sup>-century elite, based on the arrangement of the oldest territorial possessions.<sup>26</sup> The turn of the 12<sup>th</sup> and 13<sup>th</sup> centuries marked the outset of the process of the territorialisation of the elites – either as a result of a natural reaction to the petrification of political divisions, or as a consequence of the deliberate policies of dukes. In Tomasz Jurek’s opinion, this last phenomenon relates to Silesia, where, after the return of the descendants of Ladislaus the Exile, a significant turnover was observed among the elite of magnates. The large proportion of foreigners holding the post of castellan, as well as a relatively large rotation in the management structures of particular castellanies, allow us to conclude that Silesian rulers maintained full control over the process of awarding temporary (sometimes perhaps even lifelong, but not hereditary) nominations<sup>27</sup> throughout the entire period of the structure’s existence.

<sup>24</sup> See esp. André Thieme, *Die Burgrafschaft Altenburg. Studien zu Amt und Herrschaft im Übergang vom hohen zum späten Mittelalter*, Leipzig 2001; František Kubů, *Die staufische Ministerialität im Egerland: Ein Beitrag zur Siedlungs- und Verwaltungsgeschichte* (=Quellen & Erörterungen: Otnant-Gesellschaft für Geschichte und Kultur in der Euregio Egrensis), Pressath 1995.

<sup>25</sup> Tomasz Jurek, (review:) *Studia z dziejów średniowiecza polskiego i powszechnego*, *Acta Universitatis Wratislaviensis*, no. 979, *Historia*, vol. 59, Wrocław 1989, ‘Sobótka’, 45 (1990), pp. 552–553.

<sup>26</sup> Tomasz Jurek, *Rotacja elity dworskiej na Śląsku w XII–XIV w.*, [in:] *Genealogia – władza i społeczeństwo w Polsce średniowiecznej*, eds Andrzej Radziwiński, Jan Wroniszewski, Toruń 1999, p. 7–27; *idem*, *Elity śląska w późniejszym średniowieczu*, [in:] *Kolory i struktury średniowiecza*, ed. Wojciech Fałkowski, Warsaw 2004, p. 404.

<sup>27</sup> A handy list of Silesian castellans in the 13<sup>th</sup> century: Ulrich Schmielewski, *Der schlesische Adel bis zum Ende des 13. Jahrhunderts. Herkunft, Zusammensetzung und politisch – gesellschaftliche Rolle*, Würzburg 2001, pp. 270–288.



## Pro-integration practices of the authorities: journeys and residences of rulers

In the 12<sup>th</sup> and 13<sup>th</sup> centuries the only effective method of exercising power over subordinate territories – excluding castles and castellanies – was their regular inspection by rulers and their courts. Of highest importance during such visits were the administrative, control-related and economic functions of such excursions, but one should certainly not ignore their representative and legitimizing aspects. The mobility of medieval monarchs is a thoroughly explored subject; however, due to the scarcity of related diplomatic sources it is impossible for scholars (here we refer exclusively to the Polish context) to reach more definite conclusions on rulers' methods of evaluation of their subordinate lands, based on such sources as analysis of the Reich's royal itineraries from the period between the 10<sup>th</sup> and 13<sup>th</sup> centuries. In the context of the issue of consistency of rule – and also (although this is much less conspicuous) of the identity and identification of subjects with their ruler – the question of a ruler's presence or absence seems to be of fundamental significance. Therefore, we shall attempt to briefly outline this issue for the period starting from the beginning of the reign of Henry the Bearded until the first partition of Silesia in 1249. The unquestionably central role of Wrocław is illustrated in the sixteen ducal diplomas; together with the narrative sources they also provide proof of the sovereign's frequent stays at the ducal court in Leśnica, located 10 kilometres away from Wrocław and lying on the route leading westwards. The court was not only meant to serve dukes as a stopping place on the road to Legnica, it was also the centre of a ducal hunting forest.<sup>28</sup> The role of the Legnica residence, rebuilt by Henry or perhaps his father in imitation of imperial palaces, is somehow omitted in documents. More space is devoted to the ducal estate of Rokitnica located a dozen or so kilometres from Legnica.<sup>29</sup> We can therefore assume that the main transport axis in the realm of the Silesian dukes in the first half of the 13<sup>th</sup> century is determined by rulers' travels from Wrocław to Legnica and Rokitnica. Along this route, measuring more than 80 kilometres, lay Leśnica and Środa Śląska, the latter founded before 1235. Among the places visited periodically by the dukes we can also identify the most important ducal foundations – monasteries in Lubiąż, Trzebnica and Henryków, as well as the court in Brzeg, where, according to historical sources, Henry the Bearded was to meet Boleslaus the Chaste on Christmas of

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<sup>28</sup> For the broadest description of the role of Leśnica in the 13<sup>th</sup> century see Marta Młynarska-Kaletynowa, *W sprawie początków dworu książęcego w Leśnicy*, [in:] *Viae historiae. Księga jubileuszowa dedykowana Prof. Lechowi A. Tyszkiewiczowi w siedemdziesiątą rocznicę urodzin*, eds Mateusz Goliński, Stanisław Rosik, Wrocław 2001 (=Acta Universitatis Wratislaviensis, No 2306, Historia 152), pp. 277–282; doubts as to the existence of a ducal residence built of brick in this location have been recently expressed by Małgorzata Chorowska, *Rezydencje średniowieczne na Śląsku. Zamki, pałace, wieże mieszkalne*, Wrocław 2003, pp. 64–66.

<sup>29</sup> On the ducal courts of 13<sup>th</sup>-century Silesia Karol Modzelewski, *Organizacja gospodarcza państwa piastowskiego*, Poznań 2000, (2<sup>nd</sup> edition), pp. 52–57.

1234.<sup>30</sup> Meriting extremely rare mention as a place of residence for rulers is Głogów.<sup>31</sup> Periodic amendments to ducal itineraries – revealed by scholars despite the scarcity of sources – were brought about not only by new dynastic divisions or the introduction of new and the disappearance of old administrative and residential centres, but surely by personal preferences of rulers as well. As an example, we can point to the changes introduced in this area in the brief period of the reign of the sons of Henry the Pious, between 1241 and 1249: the fact that not a single diploma was issued at that time in Rokitnica by Boleslaus Rogatka presents firm evidence that the castle was deprived of the status of a ducal residence, and in contrast to his predecessors the duke stayed at the Ślęza castle.<sup>32</sup> On this basis we can easily distinguish the regions enjoying the temporary but regular presence of rulers, where ducal power was demonstrated in a physical manner, from the peripheral regions – those visited rarely or never at all, where rulers were represented at best by their officials. The multiplication of dynastic divisions in the second half of the 13<sup>th</sup> century brought immediate consequences in the changes to administrative methods: the ducal tours ceased to be an indispensable condition of effective control over the territory and demonstration of power over small districts. So far, despite the considerable amount of sources, especially from the Late Middle Ages, there has been little progress in the area of studies on ducal itineraries in Silesia. Their broader analysis will allow for a better understanding of not only the matter of the territorial management of duchies, but also of mechanisms for exercising authority in the Late Middle Ages.<sup>33</sup>

The study of the administrative structure of Silesia – especially difficult due to the scarcity of sources from the period between the 12<sup>th</sup> and 13<sup>th</sup> centuries – yields no conclusions concerning the role of this structure in the formation of the region's identity and cohesion. The 13<sup>th</sup>-century growth in the number of courts and related official hierarchies of district duchies can be hardly treated as an integrating factor. Even the terminology indicating the existence of a Silesia-wide administrative unity seems to be erratic. In writings dating back to the second half of the 13<sup>th</sup> century by Piotr, Abbot of Henryków about the ducal notary Nicholas, founder of his monastery, Piotr states that Nicholas gained authority over all the lands of Silesia (*regimen totius terre Sleziensis*) by virtue of performing chancellery duties.<sup>34</sup> Even if we recognize the writer's *licentia*

<sup>30</sup> Sub., vol. 2, No. 79.

<sup>31</sup> On Christmas of 1208 the residence saw the meeting of Henry the Bearded with the Dukes of Greater Poland: Ladislaus Laskonogi (the Spindleshanks) and Ladislaus Odonic, combined with the baptism ceremony of the nameless son of the ducal couple, Sub., vol. 1, No. 116.

<sup>32</sup> Sub., vol. 2, nos. 231, 299, 339; on the castle and the Ślęza castellany: M. Młynarska-Kaletynowa, *Z zagadnień zarządu*, pp. 127–129.

<sup>33</sup> An appropriate example would be the study by Tomasz Jurek, *In sede viduali. Nad itinerarium księżnej świdnickiej Agnieszki z lat 1385–1392*, [in:] *Europa Środkowa i Wschodnia w polityce Piastów*, ed. Krystyna Zielińska-Melkowska, Toruń 1997, pp. 275–289. On the itineraries of the Bishops of Wrocław: Ewa Wólkiewicz, *Curia episcopalis. Organizacja rezydencji biskupów wrocławskich w późnym średniowieczu*, [in:] *Dom, majątek, klient, sługa – manifestacja pozycji elit w przestrzeni materialnej i społecznej Europy (XIII – XIX wiek)*, eds Marcin Pauk, Monika Saczyńska, Warsaw 2010.

<sup>34</sup> *Liber fundationis*, p. 110.

*poetica* in creating the image of his character, it is still hard to accept that the term *terra Sleziansis* was understood by the Cistercian chronicler – neither at the moment of writing, nor in the period of the narration – as meaning something different than the reign of Nicholas’s employer, Henry the Bearded, who did not, in fact, control the whole Silesian territory.

### **The Bishopric of Wrocław in the 12<sup>th</sup> and 13<sup>th</sup> centuries – ecclesiastical unification versus political decentralization**

It is beyond doubt that Silesia remained the only province of the Piast state which was subordinate to one ecclesiastical superior, represented by the Bishop of Wrocław. This bears great similarity to the situation in Bohemia and Moravia, where during the reign of the Přemyslid dynasty two Bishoprics corresponded more closely to the basic political divisions of their realm than to those in the remaining Piast districts (divided, like Greater Poland and Mazovia, between two dioceses). The fact that the range of the ecclesiastical administrative unit founded in AD 1000 overlapped with the clearly-marked natural borders of the region defined in the oldest dated sources as Silesia makes it reasonable to view the ecclesiastical structure as playing a crucial role in laying the foundations of regional religious identity.<sup>35</sup> A crucial role in the medieval political value system might have been played by the cult of Bishoprics’ patrons – a practice which served as a tool to develop a sense of togetherness in communities (which will be discussed in detail later in this chapter). A sense of a common obedience to the Church shared by the inhabitants of the Silesian province remains the oldest surviving evidence of the foundations of a shared Silesian identity, transcending the boundaries of communities based on kinship and neighbourly relations.<sup>36</sup>

The oldest recorded castle topography of Silesia, mentioned in the 1155 Bull of Adrian IV, causes a fundamental interpretative dilemma due to the incompleteness of the list of castles located in the territory of the Wrocław Bishopric. The act of extending the papal document by the list of castles in territories which were in nearly all cases geographically classified as parts of the southern frontier of the Silesian diocese, as well as by Milicz (located in the north), where according to the Bull of Gniezno (issued 1136 by Innocent II for the Polish Church) the ducal tithes were collected by the Archbishop, may be proof of the bishop’s intentions to secure the canonical territory of the Bishopric of

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<sup>35</sup> However, we must point out that bishoprics were described very precisely by their territorial name. Similarly to other Polish dioceses (excluding the one in Kuyavia), nomenclature derived from the name of diocesan capitals clearly dominates. An exception to the above is found in a document issued by Ladislaus Odonic for the Cistercian Nuns of Trzebnica in 1208, where Bishop Laurentius is referred to as *episcopus Zlesie* (SUB., vol. 1, No. 117).

<sup>36</sup> Recently discussed also by Stanisław Rosik, *Najdawniejsza postać Śląska (do XIII w.) Pejzaż krainy a kształtowanie się śląskiej tożsamości regionalnej: przykład Śląży i Trzebnicy*, [in:] *Radices Silesiae – Silesiacae Radices. ‘Śląsk: kraj, ludzie, memoria a kształtowanie się społecznych więzi i tożsamości (do końca XVIII wieku)*, eds Stanisław Rosik, Thomas Wünsch, Wrocław 2011, pp. 64–65.

Wrocław against the claims of the neighbouring bishops and possible attempts to contest the outline of the diocesan frontiers. This may appear all the more true as in those days there was no such thing as fixed linear frontiers. This situation could have lasted until the second half of the 11<sup>th</sup> century, when in addition to the recurring Czech claims and territorial expansion on the southern frontiers of Silesia, claims by the Bishop of Prague may also have been advanced as to the Church's power over certain territories on the northern side of the Sudetes and Beskids. To some extent they were legitimized by such documents as the forged imperial diploma of 1086, confirming not so much the historical borders of the diocese of Prague as the range of the Přemyslids' political influence in the second half of the 10<sup>th</sup> century.<sup>37</sup> Here we should recall that not only the dukes of the Přemyslid dynasty organized plundering raids on lands of left-bank Silesia, but in the times of Břetyslav II the Czechs attempted to take control over the borderland by demolishing the castle in Bardo and raising a new fortress in Kamieniec Ząbkowicki.<sup>38</sup> Territorial conflicts between the Bishoprics of Wrocław and Olomuc on the Moravian-Silesian borderlands took place until the first decades of the 13<sup>th</sup> century.

Unfortunately, little can be said about the position of the Bishop of Wrocław in the 11<sup>th</sup>- and 12<sup>th</sup>-century local and central structures of authority. In our opinion, the political role of bishoprics as an important integrating factor is underrated.<sup>39</sup> The ruler-dependent Church hierarchs, who, according to the oldest income records contained in the papal bulls, possessed remarkable economic potential and exercised control over secular authority, could have constituted an effective counterbalance to the growing influence of local magnates. Hence, among other things, rulers' tendency to fill the offices of bishopric capitals with candidates of foreign origin and members of the ducal *capella*. This topic deserves special focus in future research. Despite all the difficulties with reaching unequivocal conclusions as to the origins of Silesian hierarchs in the earliest period of the diocese's existence, what is certain is that they were mainly foreigners – just as in the case of other Polish dioceses. Nonetheless, the exact place of origin can be indicated only in the case of Walter of Malonne. It is his promotion from the cathedral provostry in Płock – and therefore from the Church circle closely connected with the Piast court in the first half of the 12<sup>th</sup> century – to the Bishopric of Wrocław in 1149, that seems to be extremely significant.<sup>40</sup> This nomination was awarded a few years after the expulsion of the senior of the dynasty, at the height of the political power wielded by the family of Piotr Włostowic; although the relations between the senior and the local

<sup>37</sup> SUB., vol. 1, No. 5.

<sup>38</sup> *Cosmae Pragensis Chronica Boemorum*, 3, 4, p. 164.

<sup>39</sup> The integrating aspect of the Bishop's nominations in the Reich is emphasized by Fink von Finkenstein, *Bischof und Reich. Untersuchungen zum Integrationsprozess des ottonisch – frühsalischen Reiches (919–1056)*, Sigmaringen 1989.

<sup>40</sup> For an accurate description of the political circumstances of Walter's nomination see the recent publication by Piotr Boroń, *Biskup Walter i początki kultury umysłowej na Śląsku*, [in:] *Źródła kultury umysłowej w Europie Środkowej ze szczególnym uwzględnieniem Górnego Śląska*, ed. Antoni Barciak, Katowice 2005, pp. 120–121.

magnates were rather harmonious,<sup>41</sup> we must recognize that the person of a bishop who was closely connected with Boleslaus the Curly could have been an effective counterbalance to the growing influences of the secular political elite. Proof of the Bishop's strong position in the provincial hierarchy could be, for instance, his alleged participation in the rulers' minting activities.<sup>42</sup> As it stands, in the bull of 1155 Bishops and chapters owned extensive territory, and enjoyed both absolute secular jurisdiction over their people and certain ducal privileges in two castle districts, Otmuchów and Milicz. These were admittedly peripheral regions, but from the turn of the 12<sup>th</sup> and 13<sup>th</sup> centuries, assuming the proper colonization dynamics could be maintained, they displayed the potential to spur the development of the Bishopric's power.<sup>43</sup> Owing to the extensive material property and the growing role of the papacy in the relations between the secular authorities and the clergy, as early as the outset of the 13<sup>th</sup> century the Bishops of Wrocław enjoyed a favoured position in conflicts and dealings even with dukes who were as powerful and resistant to the Church's claims as Henry the Bearded.<sup>44</sup> Silesian rulers, unlike other Piast descendants, made two attempts at exploiting the archdiocese's potential for the benefit of the dynasty. This is how we may interpret Boleslaus the Tall's nomination in 1198 of his oldest son Jaroslaus, already destined for the priestly order, as ordinary of Wrocław.<sup>45</sup> This act temporarily resolved the controversies over the distribution of power between the members of the Silesian line of the Piast dynasty. What deserves

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<sup>41</sup> See the participation of the Bishops in the foundation of the property of Włostowic – the Benedictine abbey in Olbin.

<sup>42</sup> The oldest deniers with the image of St. John the Baptist, most probably produced by the Wrocław mint, are dated to the second half of the 11<sup>th</sup> century; this activity was also carried out on the initiative of Bishop Żyrosław (and according to more recent findings also of Jarosław or Laurentius) – cf. Stanisław Suchodolski, *Moneta możnowładcza i kościelna w Polsce wczesnośredniowiecznej*, Wrocław 1987, pp. 75–80; *idem*, *Początki mennictwa we Wrocławiu*, [in:] *Słowiańszczyzna w Europie średniowiecznej*, ed. Zofia Kurnatowska, vol. 2, Wrocław 1996, pp. 125; *idem*, *Zmiany w chronologii i atrybucji monet polskich z XII/XIII w. w świetle skarbu z Głogowa*, 'Wiadomości Numizmatyczne', 36 (1992), pp. 114 and 117.

<sup>43</sup> On the territorial development of the Bishops' property within the castellany of Nysa and Otmuchów see Josef Pfitzner, *Besiedlungs- Verfassungs- und Verwaltungsgeschichte des Breslauer Bistumlandes*, Reichenberg 1926; Thomas Wunsch, *Territorienbildung zwischen Polen, Böhmen und dem Deutschen Reich: Jahrhundert*, [in:] *Geschichte des christlichen Lebens im schlesischen Raum*, eds Joachim Köller, Reiner Bendel, Münster 2002, pp. 199–264; an abbreviated version – *idem*, *Landesherrschaft und geistliches Territorium der Breslauer Bischöfe im 13. Jahrhundert – zur Präsenz eines westlichen Musters in der ostmitteleuropäischen Verfassungsgeschichte*, [in:] *Przelomy w historii. Pamiętnik XVI Powszechnego Zjazdu Historyków Polskich. Wrocław 15-18 września 1999 roku*, vol. 1, eds Krzysztof Ruchniewicz, Jakub Tyszkiewicz, Wojciech Wrzesiński, Toruń 2000, pp. 155–179; On the issue of extending the territory of the Nysa castellany see the recent publication by Ewa Wólkiewicz, *Patrimonium sancti Iohannis. U początków władztwa biskupiego w ziemi otmuchowsko – nyskiej*, [in:] *Milicz. Clavis Regni Poloniae*, pp. 225–232; the scope of authoritative rights of the Wrocław chapter in the Castellany of Milicz based on the classification of ducal and chapter competences from 1249 was summarized by Aleksander Paroń, *Uгода w sprawie kasztelanii milickiej (26. VI. 1249)*, [in:] *Milicz. Clavis Regni Poloniae*, pp. 97–127; for the political system of the Nysa duchy see Kazimierz Orzechowski, *Dzieje i ustrój księstwa biskupiego na Śląsku*, [in:] *Szkice Nyskie. Studia i materiały*, ed. Zbigniew Kowalski, vol. 3, Opole 1986, pp. 7–43.

<sup>44</sup> The papal protection over the realm of Boleslaus the Tall certified by the 1198 bull of Innocent III must have also been of particular importance. See SUB., vol. 1, No. 64.

<sup>45</sup> See J. Bieniak, *Powstanie księstwa opolsko – raciborskiego*, p. 73.

special attention here is the fact of depriving the dynasty's senior members of the right to the bishop's investiture, which was a crucial tool used for controlling the Church by the Silesian dukes across their entire realm. A similar privilege was probably exercised by the Silesian dukes in relation to the Bishopric of Lubusz.<sup>46</sup> The increasingly popular practice of nominating the dynasty's members to the office of bishop is another piece of evidence that the western European concepts of power had been absorbed at that early stage of history.

The spread of settlement and the increasing drive of sovereigns to achieve full territorial control over the lands of Nysa and Otmuchów in the second half of the 13<sup>th</sup> century spurred another violent conflict between the Church and Silesian rulers. The plans of hierarchs to create an exclusive episcopal territorial lordship over the Archdiocese of Gniezno, finally realized at the turn of the 13<sup>th</sup> and 14<sup>th</sup> centuries, must be viewed as a manifestation of this province's socio-political autonomy in the 13<sup>th</sup> century. This attempt was successful not only due to purely political factors, but also to a general political order based on western European relations and characterized by a greater degree of feudalization of social relations. The political foundation of the bishop's authority was the special privilege issued by Henry the Righteous (Probus) in 1290, based on which ordinaries were granted 'plenum dominium perfectumque in omnibus ius ducale';<sup>47</sup> during the pontificate of Henry of Wierzbno, bishops enjoyed the status of territorial rulers. What is remarkable is that the formation of the Church's authority in Silesia was a process carried out by local, Silesian-born ordinaries, while in neighbouring states where similar occurrences took place in the 13<sup>th</sup> century (Moravia and Western Pomerania) this political strategy was followed by bishops of German origin (such as Bruno von Schaumburg and Herman von Gleichen), who brought time-tested methods and strategies to central Europe. The aspirations of the Wrocław hierarchs to enjoy political autonomy must be recognized as a factor responsible for intensifying the process of decentralization, which itself had a rather negative impact on the formation of a homogeneous political identity in the region. This, however, naturally has nothing in common with the strongly integrating sense of belonging to a common diocesan structure.

In this context we must also mention that researchers have not paid much attention so far to the political aspect of the cult of the patron of the St John the Baptist Cathedral, which may be regarded as one of the key factors in shaping the Silesian regional identity. This patronage – confirmed as late as in 1155 by a bull of Adrian IV – was granted to the Wrocław cathedral probably already at the time of its erection in AD 1000. The ideological significance of the cult of the patron of the cathedral – *matris ecclesiarum* of the entire diocese – certainly deserves more attention. The cult of St John the Baptist in

<sup>46</sup> Proof of this is the transfer of rights to the diocese patronage and chapter to Archbishop Wilbrand of Magdeburg as performed by Boleslaus Rogatka and included in the agreement concerning the transfer of the ownership of the Lubusz Castle, SUB., vol. 2, No. 368.

<sup>47</sup> SUB., vol. 5, ed. Winfried Irgang, Köln-Weimar-Wien 1993, no. 452.

13<sup>th</sup>-century Silesia was rather unique compared to other duchies of the Piast provinces – his name was included in the devotional formula of the ducal title. This means that Henry the Bearded viewed his rule as a grace from both God and St John the Baptist, which illustrates the ruler's unique attitude towards the patron of his realm.<sup>48</sup> Such a distinctive articulation of a particular cult, which may be compared only with the practice of using the figure of St Wojciech (Adalbert) by the superior dukes and the figure of St Wenceslaus by the rulers of the Czech Přemyslid dynasty for the purpose of legitimizing their authority, reveals the execution of a carefully-considered political strategy. The abandonment of this strategy in the 1330s may have been a consequence of the growing emancipation of the Bishops of Wrocław from their ducal counterparts. Following the early-medieval principle according to which the patron saints of particular Church institutions were proclaimed owners of land in the possession of the Church, Bishops chose St John as the patron of their emerging territorial lordship. The diocese patron's cult might also have been partially eclipsed by attempts to create a new dynastic cult of St Bartholomew after moving his reliquary to the ancestral Piast monastery in Trzebnica, and soon after – more obviously – by the canonization of Duchess Hedwig of Silesia. The issue of the political role of Silesian late-medieval cult practices – especially in the case of St John the Baptist – naturally requires more thorough research.

## **Silesia as part of the Bohemian Crown**

Leaving the source literature with detailed descriptions of dynastic divisions behind, we should focus on the commonly accepted view of the primacy of Silesian provinces in the process of territorialisation of ducal power at the turn of the 12<sup>th</sup> and 13<sup>th</sup> centuries. The first signs of this phenomenon were manifested in the appearance of a particular nomenclature referring to territorial units in the charters of Boleslaus the Tall and Henry the Bearded, and also in the Duchy of Opole under Mieszko the Tanglefoot. The strategy behind the territorial divisions in the realm of the Silesian Piasts, where each of the duke's sons was entitled to receive a share of their father's land, did not diverge much from the legal practices of other lines of the dynasty – the problem was their prolific number. The years of 1248–9 and 1281 were key dates which marked the fragmentation of the territory of the monarchy belonging to Henry I and Henry II of Silesia, and soon after of the Duchy of Opole. The closing decades of the 13<sup>th</sup> century brought further provincial fragmentation. This was caused to a large extent by the participation of the Přemyslids in Silesian affairs, which steadily increased from the mid-13<sup>th</sup> century – one of the first mediators in the conflicts between the dukes was King Přemysl Otakar II

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<sup>48</sup> The formula 'dei et beati Iohannis gratia Slesie dux' was used in the documents of Henry the Bearded for 20 years, between 1203 and 1223, but inconsistently, see SUB., vol. 1, Nos. 87, 235.

of Bohemia, guardian of the underage son of Henry III;<sup>49</sup> during the reign of King Wenceslaus II, Bohemian domination was even more conspicuous. The first cases of accepting Bohemian domination by the Silesian dukes date to the close of the century. At that time, Henry IV the Righteous most likely became the vassal of Rudolph of Habsburg, and the sons of Ladislaus of Opole paid homage to Wenceslaus II. This manifestation of submission, however, did not determine the political future of the region. Crucial were events that took place in the 1320s and 1330s. The skilful politics and military superiority of King John of Luxembourg led to his feudal dominance over the majority of the Silesian duchies (1327–1339).<sup>50</sup> From the geopolitical point of view, of extreme significance was his agreement with Henry VI resulting in the immediate incorporation of the Duchy of Wrocław into the Kingdom of Bohemia together with the region's most prominent city, which was also its capital (1335). Luxembourg also strengthened the relations between the regional Church administration and the kingdom. There was generally no feudal dependency between the Bishops of Wrocław and the Bohemian rulers. The latter were the protectors and patrons of Wrocław after Henry VI.<sup>51</sup> Even so, there was a case when one of the Bishops had no other choice than to pledge reverence to the Bohemian ruler after buying the land of Grodków<sup>52</sup> from the Duke of Brzeg. A diplomatic success of the Bohemian ruler was persuading the Polish King Casimir the Great to waive his claims to Silesia.<sup>53</sup> John's policies were continued by Charles IV, whose aim was to equip his monarchy with a more uniform administrative system. The concept of the Bohemian Crown (*Corona regni Bohemiae*) was born during the reign of Charles IV. The new kingdom was to include all the Silesian and Lusatian acquisitions of the Luxembourg dynasty.<sup>54</sup> The Emperor also managed to extend his feudal supremacy over several independent Silesian duchies. A number of informal links between the Silesian Piasts and the Prague court can also be indicated. During his reign, Charles IV was surrounded

<sup>49</sup> Wojciech Nowacki, *Śląsk a Królestwo Czeskie w dobie jednoczenia państwa polskiego. Obszar wpływów – lenno – kraj koronny*, [in:] *Wielkopolska. Studia z dziejów średniowiecza ofiarowane Profesorowi Bronisławowi Nowackiemu*, eds Zbyszko Górczak, Jacek Jaskulski, Poznań 2009, pp. 227–255. Cf. Přemysl Bar, *Vratislavský vévoda Jindřich IV. Probus a poslední Přemyslovci*, 'Český časopis historický', 106 (2008), pp. 753–787.

<sup>50</sup> For a detailed analysis of feudal acts see Otfried Pustejovsky, *Schlesiens Übergang an die böhmische Krone: Machtpolitik Böhmens im Zeichen von Herrschaft und Frieden*, Köln 1975 (=Forschungen und Quellen zur Kirchen und Kulturgeschichte Ostdeutschlands, 13). Cf. Gernot von Gravert-May, *Das staatsrechtliche Verhältnis Schlesiens zu Polen, Böhmen und dem Reich während des Mittelalters. Anfänge des 10. Jahrhunderts bis 1526*, Aalen 1971.

<sup>51</sup> *Lehns- und Besitzurkunden Schlesiens und seiner einzlenen Fürstenthümer im Mittelalter*, ed. Colmar Grünhagen, Hermann Markgraf, vol. 1, Leipzig 1881 (hereinafter LBUS, vol. 1), No. 3, pp. 6–8.

<sup>52</sup> *Lehns- und Besitzurkunden Schlesiens und seiner einzlenen Fürstenthümer im Mittelalter*, ed. Colmar Grünhagen, Hermann Markgraf, vol. 2, Leipzig 1883 (hereinafter LBUS, vol. 2), No. 15, pp. 208–209.

<sup>53</sup> Wojciech Nowacki, *Śląsk w polityce Jagiellonów do 1471 roku*, [in:] *Scripta minora*, vol. 6, eds Zbyszko Górczak, Jacek Jaskulski, Poznań 2011, pp. 343–508.

<sup>54</sup> Lenka Bobková, *Územní politika prvních Lucemburků na českém trůně*, Ústí nad Labem 1993; *eadem*, 7.4.1348. *Ustavení Koruny království českého. Český stát Karla IV*, Praha 2006, *eadem*, *Integrace Slezska do České Koruny podle představ Karla IV. Úvod k diskusi o identifikaci Slezska jako regionu a jeho postavení v České Koruně*, 'Sobótka', 66 (2011), No. 3, pp. 3–9.



by many dukes, who also accompanied him during his foreign journeys.<sup>55</sup> A frequent visitor to the Bohemian court was also Bishop Przeclaw of Pogorzela.<sup>56</sup>

At the close of the 14<sup>th</sup> century, the following legislative order was in place: feudal duchies, lands that were incorporated into the Bohemian Crown and the privileged Church duchy of the Bishops of Wrocław. Both hereditary Dukes and Bishops were guaranteed full independence in making decisions on domestic policy and constitutional matters. Although the Luxembourg dynasty had a firm grip over the incorporated Duchy of Wrocław and Duchy of Świdnica-Jawor, their political autonomy was still respected. What is conspicuous is that the ambition of Bohemian rulers was neither to integrate the lands of Silesia nor to enlarge the territory subordinate to the Crown. Lordless fiefdoms were ceded to other ducal lines, which further deepened the political divisions and fragmentation of the land's administrative structure.<sup>57</sup> What is more, there was no uniform initiative that would usher in any Silesia-wide institutions. The very limited powers of the governor of the duchy, an office introduced in 1335, applied mainly to the Duchy of Wrocław – a subordinate of the Bohemian Crown.<sup>58</sup> We can only point out incidental cases of regulations concerning issues of a greater than local scale being introduced (i.e. customs and transport along the Odra river, competences of governors regarding robbery).<sup>59</sup>

From the perspective of the Silesian political system, of crucial importance was the reign of Matthias Corvinus. His rule was strikingly different to that of the Bohemian kings and aimed at reducing the number of feudal duchies. At that time Silesia was subordinated directly to the king, which resulted in the formation of a separate political system for the region. The reign of Corvinus saw the introduction of the Silesian Parliament (*sejm*) – a platform for communication between dukes, state representatives and the king. The principal institution was the office of the Governor of the Province introduced in 1474, with power over political and fiscal issues in the hands of the governor.<sup>60</sup> These unifying factors were soon countered by factors that favoured further territorial fragmentation. One

<sup>55</sup> Lenka Bobková, *Slezští Piastovci na dvoře Karla IV.*, [in:] *Piastowie śląscy w kulturze i europejskich dziejach*, ed. Antoni Barciak, Katowice 2007, pp. 168–180; eadem, *Společné pouto. Slezská knížata ve vztahu k Janu Lucemburskému a Karlu IV.*, [in:] *Slezsko, země Koruny české. Historia a kultura 1300 – 1700*, eds Helena Dáňová, Jan Klípa, Lenka Stolárová, Prague 2008, pp. 115–127.

<sup>56</sup> *Regesta Imperii*, no. 2243, 2261, 2262-3, 2266 *et. al.*

<sup>57</sup> Particularly meaningful in this case is the history of the part of the Duchy of Głogów temporarily incorporated into the Crown and later granted as a fiefdom to the Duke of Cieszyn, cf. Jana Wojtucka, *Začlenění Hlohovska do Koruny české a jeho vývoj v letech 1331-1384*, [in:] *Korunní země v dějinách českého státu. Integrační a partikulární rysy českého státu v pozdním středověku*, ed. Lenka Bobková, vol. 1, Prague 2003, pp. 96–160.

<sup>58</sup> Ewa Wólkiewicz, *Capitaneus Slesie. Królewscy namiestnicy księstwa wrocławskiego i Śląska w XIV i XV wieku*, [in:] *Monarchia w średniowieczu. Władza nad ludźmi. Władza nad terytorium*, eds Jerzy Pysiak, Aneta Pieniądz-Skrzypczak, Marcin Pauk, Warsaw 2002, pp. 193–195.

<sup>59</sup> Cf. Kazimierz Orzechowski, *Historia ustroju Śląska 1202 – 1740*, Wrocław 2005, p. 77.

<sup>60</sup> Kazimierz Orzechowski, *Generalny starosta Śląska. Ewolucja urzędu*, [in:] *Studia historycznoprawne. Tom dedykowany Profesorowi Doktorowi Alfredowi Koniecznemu*, ed. Kazimierz Orzechowski, Wrocław 2004 (=Acta Universitatis Wratislaviensis, No. 2616, Prawo 288), pp. 133-144; Mlada Holá, *Institucionální ukotvení moci českých králů ve slezském prostoru. K problematice prosazení úřadu vrchního slezského hejtmána ve druhé polovině 15. století*, 'Sobótka', 66 (2011), No. 3, pp. 65–72.

of them was the emergence of the first free states, which became a permanent element of the Silesian political landscape in the modern period.<sup>61</sup> The reign of Ladislaus Jagiellon brought further developments in the area of territorial integration, to a large extent attributable to the territorial privilege of 1498. The document determined the organizational structure of *curias* in the Silesian Parliament, and introduced the ducal tribunal as a common judicial forum for all the political bodies of the region.<sup>62</sup>

## Legislative and political transformations as a result of the 13<sup>th</sup>-century modernization

### a) city law

Apart from political changes, it was economic transformations, and especially the 13<sup>th</sup>-century process of modernization, that had a crucial impact on the political system of Silesia. Changes in the legal order are classified by Sławomir Gawlas as follows:

1. from the exclusivity of Polish law to the domination of German law;
2. from a law common to all residents, modified only by the principle of personality of law, to the foundations of a state justice system;
3. from customary law and legal proceedings conducted exclusively in oral format to the prominence of written law and spread of legal principles in written form.<sup>63</sup>

A consequence of colonization processes and incorporation of new residents of foreign ethnic origins was the introduction of German law-based jurisdiction, guaranteeing the newcomers the settlement of disputes according to the law they were accustomed to. The adaptation of western laws was not a homogeneous process, and during the 13<sup>th</sup> century it underwent continuous transformations. The proximity of Saxony meant that the most frequently and commonly followed model was the Saxon one, and the majority of towns adopted the law of Magdeburg.<sup>64</sup> In the opening phase of the relocation process the Flemish law was also frequently applied, but in the Late Middle Ages its scope was narrowed and the law related mainly to the most economically backward lands of the Church duchy.<sup>65</sup> A marginal influence should be attributed to the laws of other regions,

<sup>61</sup> Marian Ptak, *Pozycja publiczno-prawna wolnych panów stanowych na Śląsku*, [in:] *Studia historyczno-prawne*, ed. Alfred Konieczny, Wrocław 1993 (=Acta Universitatis Wratislaviensis, No. 1477, Prawo 222), pp. 79–102.

<sup>62</sup> Kazimierz Orzechowski, *Rola przywileju króla Władysława z 1498 r. w dziejach śląskiego stanowego parlamentaryzmu*, [in:] *Vladislavské zřízení zemské a počátky ústavního zřízení v českých zemích (1500-1619). Sborník příspěvků z mezinárodní konference konané ve dnech 7. - 8. prosince 2000 v Praze*, eds Karel Malý, Jaroslav Pánek, Prague 2001, pp. 153–163.

<sup>63</sup> Sławomir Gawlas, *Przemiany systemów prawa na Śląsku w dobie kolonizacji w XIII wieku*, [in:] *Kultura prawna w Europie Środkowej*, ed. Antoni Barciak, Katowice 2006, p. 45.

<sup>64</sup> For more details see Joseph Joachim Menzel, *Die schlesische Lokationsurkunden des 13. Jahrhunderts*, Würzburg 1977, *idem*, *Die schlesischen Städte am Ausgang des Mittelalters*, [in:] *Die Städte am Ausgang des Mittelalters*, ed. Wilhelm Rausch, Linz 1974, pp. 251–268. For a summary of the discussion and list of related sources see S. Gawlas, *Przemiany systemów*, pp. 68–71.

<sup>65</sup> Cf. Theodor Goerlitz, *Das flämische und das fränkische Recht in Schlesien und ihr Widerstand gegen das sächsische Recht*, 'Zeitschrift der Savigny Stiftung für Rechtsgeschichte. Germanistische Abteilung', 57

such as the law of Głubczyce.<sup>66</sup> In comparison with the Kingdom of Poland, whose law was based almost exclusively on the law of Magdeburg, Silesia presented much more legal diversity. It must be remembered, however, that in the neighbouring areas of Moravia and Bohemia this diversity was even more developed.<sup>67</sup> A common phenomenon was that of rulers striving to eliminate the dependence of municipal judicial bodies upon tribunals located outside their kingdom, visible through the last quarter of the 13<sup>th</sup> century in the introduction of high courts to the capitals of duchies. Such courts appeared in Wrocław, Środa Śląska, Lwówek, Złotoryja, Oleśnica, Legnica, Racibórz, Opole and Nysa.<sup>68</sup> For the reasons mentioned above, the adoption of this particular type of German law by dependent cities was seen by their sovereigns as highly beneficial. The drive of dukes to unify their realms has not been yet closely studied, therefore it would be desirable to conduct a preliminary survey in this area presenting the main aspects of the municipal policy of the Bishops of Wrocław. The Flemish law that was applied on the occasion of the location of the city of Nysa – most probably in the first decade of the 13<sup>th</sup> century – established the legal model present in the privileges granted to the settlers of other Episcopal centres, Ujazd and Wiązów. From the 1390s on, the authorities of Nysa, the then capital of the Episcopal duchy, gained the status of a court of appeal based under Flemish law.<sup>69</sup> Its sentences, *ortyle* (German: *urteil*), applied not only to all of the Bishop's municipalities located within the Episcopal state, but also to those located in other duchies. The legislative integration of Episcopal municipalities was facilitated by the policies of subsequent Episcopal governors. Bishop Przeclaw of Pogorzela, whose location of Otmuchów was also based on Flemish law, explained that in doing so he was simply following the model in place at the duchy's capital.<sup>70</sup> A similar attitude was held by Bishop Wenceslaus of Legnica. His privilege issued for the founder of the town Rychtal, which

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(1937), pp. 138–181. For the itineraries of the Bishops of Wrocław see: Kazimierz Orzechowski, *Rola biskupów wrocławskich w ustrojowych dziejach średniowiecznego Śląska*, Sobótka, 53 (1998), No. 3–4, pp. 359–363; *idem*, *Wacław legnicki biskup wrocławski i jego 'Kirchenrecht'*, [in:] *Ludzie Kościoła katolickiego na Ziemi Śląskiej. Zbiór studiów*, ed. Krystyn Matwijowski, Wrocław 1994 (Prace Historyczne, vol. 10), pp. 23–31.

<sup>66</sup> *Das Leobschützer Rechtsbuch*, prepared by Gunhild Roth, published by Winfried Irgang, Marburg 2006 (=Quellen zur Geschichte und Landeskunde Ostmitteleuropas, vol. 5).

<sup>67</sup> For a concise survey of the types of city laws in the Bohemian crown see František Hoffman, *České město ve středověku*, Praha 1992, pp. 247–252.

<sup>68</sup> Cf. Theodor Goerlitz, *Die Oberhöfe in Schlesien*, Weimar 1938.

<sup>69</sup> SUB., vol. 6, eds Winfried Irgang, Daphne Schadewaldt, Köln-Weimar-Wien 1998, No. 490; *Urkundensammlung zur Geschichte des Ursprungs der Städte und der Einführung und Verbreitung deutscher Kolonisten und Rechte in Schlesien und der Ober-Lausitz*, eds Gustav Adolf Tzschoppe, Gustav Adlof Harald Stenzel, Hamburg 1832 (hereafter UGUS), No. CXL: 'adjicientes, quod quocienscunque et quandocunque in aliis civitatibus nostris seu opidis aut villis Teutonicalibus, vel in aliqua earum, ubicunque et in quibuscunque ducatus sitis, in quibus iurisdicatio ad nos spectat, apud laycos in iudicio, in quacunque causa suborta fuerit questio, sic quod dubitetur qualiter in causa hujusmodi sententia sit ferenda, semper ad civitatem nostram Nyzensem pro jure sive sententia, que vulgariter Urteyl dicitur, per homines loci illius, in quo dubitationem hujusmodi suboriri contigerit, recurratur'. Cf. also T. Goerlitz, *Oberhöfe*, pp. 37–38.

<sup>70</sup> 'In aliis vero omnibus et singulis ipsum advocatum Othmuchoviensem ritus et consuetudines laudabiles civitatis nostre Nyzensis et advocati in ibidem volumus imitari', UGUS, No. CLXIV, pp. 564–566.

was to be located in the Episcopal manors in the Duchy of Namysłów, was clearly modelled after Nysa.<sup>71</sup> This well-regarded municipal policy was somehow disrupted by the temporary shift of Nysa to the law of Magdeburg initiated by Bishop Henry of Wierzbna (1308). This change put an end to the institution of the court of appeal and brought into question the legal cohesion of Episcopal towns. Even so, the Bishop soon realized the negative effects of his decision and revoked it on the grounds of the possible damage that could have been done to both the Bishopric and the townspeople.<sup>72</sup> At this point we may indicate one more aspect of Episcopal urban politics. At the outset of the 16<sup>th</sup> century, local elections in all Episcopal towns took place on the same date (around St. Martin's day). However, it would be difficult to verify whether this was the result of a purposeful regulation issued by the Bishop, or only the effect of his recommendation to copy the custom adopted by the capital city of Nysa. Nonetheless, what is certain is the unquestionable importance of introducing order and the unification of municipal structures within the duchy.<sup>73</sup>

Location processes resulted in the formation in Silesia of judicial districts known as *weichbilds* (*districtus*), which, in the 13<sup>th</sup> century, replaced the former castellan structure. The *weichbilds* were modelled on eastern Saxonian solutions, and comprised a number of rural communes subordinated to the *weichbild* town.<sup>74</sup> Their average number fluctuated between 15 and 20 rural settlements; however, in this matter there was no uniformity and there were *weichbilds* with over 70 settlements, or, on the contrary, undersized *weichbilds* composed of only a few of them.<sup>75</sup> The network of Silesian *weichbilds* developed mostly at the beginning of the 14<sup>th</sup> century while the towns, introduced some time later, unlike the *weichbilds* did not belong to separate districts.<sup>76</sup> Larger towns were usually the heart of particular judicial districts, but there were exceptions to this

<sup>71</sup> 'Decernentes, ipsius incolas eisdem uti et gaudere municipalibus juribus, statutis et consuetudinibus, quibus opidum nostrum Nyssense utitur sive gaudet, taliter, quod quociens casus dubius in iudicio super aliqua ferenda sententia emerserit, ipsum jus in Nysa queri debeat et inde, ut moris est, reportari', *ibidem*, No. XCX, pp. 602–603.

<sup>72</sup> *Ibidem*, no. CXI, pp. 485–486: 'tam nobis et nostre Wratislaviensi ecclesie, quam ipsi civitati et ejus incolis nullam prorsus utilitatem aut commodum, sed potius incommodum multiplex ut experientia docuit, attulisset'.

<sup>73</sup> Ewa Wólkiewicz, *Władze komunalne Nysy XIII – XVII w.* (currently in print).

<sup>74</sup> Benedykt Zientara, *Z dziejów organizacji rynku w średniowieczu. Ekonomiczne podłoże 'weichbildów' w arcybiskupstwie magdeburskim i na Śląsku w XII-XIII wieku*, 'Przegląd Historyczny', 64 (1978), pp. 681–696.

<sup>75</sup> Cf. Joseph Joachim Menzel, *Stadt und Land in der schlesischen Weichbildverfassung*, [in:] *Die mittelalterliche Städtebildung im südöstlichen Europa*, ed. Heinz Stoob, Köln 1974 (=Städteforschung, Reihe A, vol. 4), p. 33. K. Orzechowski erroneously claims that the network of *weichbilds* was not established in Upper Silesia, K. Orzechowski, *Historia ustroju*, pp. 30, 71. On *weichbilds*: Heinrich von Loesch, *Die schlesische Weichbildverfassung in der Kolonisationszeit*, [in:] *idem, Beiträge zur schlesischen Rechts- und Verfassungsgeschichte*, Konstanz 1964, pp. 83–98. (first edition: 'Zeitschrift der Savigny-Stiftung für Rechtsgeschichte: Germanistische Abteilung', 58 (1938), pp. 311–336); Marian Ptak, 'Weichbild' w strukturze terytorialnej Śląska, [in:] *Podziały terytorialne Polski. Przeszłość – teraźniejszość – przyszłość. Past – present – future. Materiały konferencji historyków prawa w Karpaczu (29 IX – 1 X 1997)*, Wrocław 1997, pp. 5–11.

<sup>76</sup> J.J. Menzel, *Stadt und Land*, p. 33.

rule (i.e. Paczków). Between the 14<sup>th</sup> and the 15<sup>th</sup> century, corrections to the original division were introduced, and as a result some *weichbilds* either swallowed others or were swallowed by others.<sup>77</sup> A radical reform of the administrative system was carried out in the Episcopal duchy in the mid-14<sup>th</sup> century, as well as in other locations. As a result, two new districts were formed following the liquidation of some districts and redistricting of the remaining ones.<sup>78</sup> What is more, the example of the Episcopal duchy highlights problems associated with the introduction of new administrative divisions. The system of *weichbilds*, replacing the former division into castellanies, had a completely different legal foundation. They were basically composed of villages linked with a town founded on German law. Therefore, villages based on Polish the legal system remained outside the new order. In the case of the Episcopal duchy this problem was dealt by isolating several villages which were in turn subordinated to the district of Otmuchów ('bona et ville eiusdem districtus locata iure polonicali'). However, this resulted in the formation of one of the largest *weichbilds* in Silesia, consisting of 69 villages based on German law and 51 settlements based on Polish law.<sup>79</sup> Over time, *weichbilds* also began to play a significant role in the process of building territorial noble communities.<sup>80</sup> In the modern era they served as the basis of the military system.<sup>81</sup> However, we should not forget that this development was gradual and not uniform throughout the region. For instance, in the Episcopal duchy the representatives of the nobility were elected in the so-called 'quarters' (*Viertel*), which only partially overlapped with district territorial divisions.<sup>82</sup>

The *weichbilds* focused mainly on exercising supreme jurisdiction over rural residents. Judicial duties could also be performed by *advocatus* (Vogt), residing in the *weichbild* town. In the first half of the 13<sup>th</sup> century the office of Vogt was frequently held by the town's founder (*scultetus*), hence in Silesia the term *advocatus* (hereditary) replaced

<sup>77</sup> I.e. the district of Uraz, *ibidem*, p. 32.

<sup>78</sup> *Liber fundationis* contains references to the district of Nysa and 'dystrictus versus Stynaviam', 'districtus versus Czignyhals' and 'districtus versus Vrienwalde'. It has been found that although there never existed a *weichbild* of Paczków (Paczcow caret provincia), several settlements were connected to the town: *Liber fundationis episcopatus Vratislaviensis*, eds Hermann Markgraf, Joseph Wilhelm Schulte, Breslau 1889 (=Codex Diplomaticus Silesiae, vol. 14), pp. 4–119. The Bishopric's register of property from the 1420s already contained the *weichbilds* of Nysa, Otmuchów, Widnawa and Głuchołazy. The majority of towns from the 'versus Stynaviam' district and the villages that were concentrated around Paczków were soon incorporated into the district of Nysa: *Quellen zur Geschichte der Besitzverhältnisse des Bistums Breslau*, eds Hermann Markgraf, J. W. Schulte, [in:] *Studien zur schlesischen Kirchengeschichte*, Breslau 1907, (Darstellungen und Quellen zur schlesischen Geschichte, vol. 3), pp. 227–254.

<sup>79</sup> *Quellen zur Geschichte der Besitzverhältnisse*, p. 249.

<sup>80</sup> Gustav Croon, *Die landständische Verfassung von Schweidnitz-Jauer. Zur Geschichte des Ständewesens in Schlesien*, Breslau 1912 (=Codex Diplomaticus Silesiae, vol. 27), p. 147.

<sup>81</sup> The examples (including medieval ones) were compiled by G. Croon, *ibidem*, pp. 149–151.

<sup>82</sup> In 1463 Bishop Jodok elected the local governors: a pair of them was assigned to each of the five circuits: the Otmuchów quarter, the so-called Nieder-Viertel, the Nysa *weichbild*, the Paczków quarter and the Grodków quarter, cf. *Liber fundationis episcopatus*, p. 14. During the military registration, the so-called *okazowanie*, of 1503, four quarters were designated as fundamental for military defence, the lower and higher Otmuchów quarter and two isolated Nysa quarters, see Mateusz Goliński, *Ślužba rycerska a potencjał militarny księstw śląskich w późnym średniowieczu*, cz. I. *Księstwo nysko-otmuchowskie, 'Sobótka'*, 53 (1998), Nos. 1-2, pp. 58–59.

the term *scultetus*, used in a majority of areas of the Reich.<sup>83</sup> Initially this seemed to be a convenient solution; however, as time passed and further lands were gradually occupied, the judiciary duties of the town's *advocatus* became exceedingly onerous. For this reason, rulers often decided to appoint another official – *advocatus terrae* (*Landvogt*). Because both the hereditary *advocatus* and *advocatus terrae* were titled with the same Latin term *advocatus*, it is often hard to determine the moment when the change and permanent separation of both offices took place. The term *advocatus provincialis*, which clearly reflected the differences between these two functions, was confirmed for the first time as late as 1261 in the Duchy of Wrocław.<sup>84</sup> So far, little attention has been devoted to studying the function of Silesian *advocatus terrae*. Preliminary research has shown that this office was not equally distributed across ducal territory. This was mainly associated with the territorial range of the authority enjoyed by *advocatus terrae*, which was extended to one *weichbild*, several neighbouring *weichbilds* or to a whole duchy.<sup>85</sup> We may also suspect that differences existed in the scope of their powers. A crisis of the office of *advocatus terrae* affected the majority of Silesian duchies starting from the second half of the 14<sup>th</sup> century. *Advocatus terrae* obligations were frequently taken over by new officials: governors (*starostas*).<sup>86</sup> Wrocław liquidated the office of *advocatus terrae* as early as in 1400, in other duchies its importance was gradually fading, and in the 15<sup>th</sup> century its role was peripheral.<sup>87</sup> Relatively strong was the position of the *advocatus terrae* in Upper Silesia and in the Episcopal duchy where, until the modern era, this post was granted mainly to members of the local nobility.<sup>88</sup>

#### b) feudal law

One of the most significant consequences of the so-called ‘13<sup>th</sup>-century transformation’ was the introduction of the feudal system into central Europe. Due to its scope and stability, feudalism determined social relations in Europe in both the Middle Ages and beyond. This was undoubtedly manifested in the sociopolitical autonomy of Silesia in

<sup>83</sup> Heinrich von Loesch, *Die Verfassung im Mittelalter*, [in:] *Geschichte Schlesiens*, ed. Hermann Aubin, Breslau 1938, p. 339. Also: Cf. J.J. Menzel, *Stadt und Land*, p. 26.

<sup>84</sup> SUB., vol. 3, ed. Winfried Irgang, Köln-Wien 1984, no. 343.

<sup>85</sup> These officials usually supervised only one *weichbild* at a time, J. J. MENZEL, *Stadt und Land*, p. 33. This was, however, not always the case. For instance, in the bishop's duchy, an official called *landwójt* supervised as many as four *weichbilds*.

<sup>86</sup> Cf. E. Wólkiewicz, *Capitaneus Slesie*, pp. 169–225. On the functioning of the Silesian offices of governors (*starostas*) of the province and duchies see several articles in the volume *Hejtmanská správa ve vedlejších zemích Koruny české*, eds Lenka Bobková, Martin Čapský, Irena Korbelařová, Opava 2009 (=Acta historica Universitatis Silesianae Opaviensis, Supp. 7).

<sup>87</sup> From the mid-14<sup>th</sup> century the office of *landvogt* was repeatedly resold and pledged, and eventually purchased by the council in 1434. For more details see Mateusz Goliński, *Naczelne organy komunalne i wójtostwo świdnickie do 1740 roku*, [in:] Mateusz Goliński, Jarosław Maliniak, *Urzednicy miejscy Świdnicy do 1740 r.*, Toruń 2007, pp. 10–11. The office of *landvogt* in Środa Śląska was subjected to the office of burgrave, who supervised the terrestrial court (*sąd ziemski*), cf. H. von Loesch, *Die Verfassung im Mittelalter*, p. 363.

<sup>88</sup> Throughout the entire medieval period there are records of the office of *landwójt* of Głogówek and Bytom, H. von Loesch, *Verfassung im Mittelalter*, p. 363.

comparison with the neighbouring territories of the Polish and Bohemian Kingdoms where, with some local exceptions, one could easily observe that ownership of land was mainly hereditary. It should not, however, be forgotten that the shape of feudal relations in late medieval Silesia differed according to the region. These new legal relations were best preserved in the area of the Duchies of Legnica and Wrocław, which in the second half of the 13<sup>th</sup> century and at the outset of the 14<sup>th</sup> century were primary destinations for heavy migrations of foreign knights.<sup>89</sup> A considerable number of fiefdoms owned by knights was located in the Episcopal duchy in the borderland of Lower and Upper Silesia. The feudal system was ideally suited to accommodate the needs of such specific political organisms as ecclesiastical lordships. What was characteristic about them is that they lacked dynastic continuity, which was the basis of secular realms. In this case feudal contracts, where the oath was renewed in the case of death of one of the parties, served as an instrument to strengthen the power of a priestly territorial sovereign. The first fiefdoms were introduced at a time when ecclesiastical power was only at the initial stage of its establishment, and sovereign rights over the territory were in the hands of the Silesian dukes. Feudal contracts were used to develop a system of personal relations different from those linking the owners of villages with their superior duke.<sup>90</sup> In certain areas of Silesia the scope of feudal law was, however, very limited. The basic form of ownership in the Duchies of Oleśnica and Głogów, which bordered with the Polish state, and in Upper Silesia, the basic form of ownership was hereditary ownership.<sup>91</sup> The introduction of the feudal system was of great importance from a number of perspectives (legal, constitutional, political and social), because it led to the refashioning of relations between dukes and the political elite.

### c) judicial system

The setup of legal relations had particular consequences for the organization of the Silesian judicial system. At the end of the 13<sup>th</sup> century the former ducal court was transformed into two independent bodies – a manorial court for the owners of landed estates under German jurisdiction (*Hofgericht, iudicium curie*), and *czud* for the owners of villages under Polish jurisdiction (*Zaudengericht*). Initially, the system was more or less uniform in all the duchies of Lower Silesia; however, in time the differences and divergences grew rapidly. In duchies with high proportions of foreign knights the institution of *czud* was liquidated very quickly. In the Wrocław Duchy the *czud* was abolished as early as in 1327 on the initiative of the inhabitants.<sup>92</sup> In the case of its ecclesiastical

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<sup>89</sup> Cf. Tomasz Jurek, *Obce rycerstwo na Śląsku do połowy XIV wieku*, Poznań 1996, pp. 176-177.

<sup>90</sup> For more details see Ewa Wólkiewicz, *Biskup i jego klientela. Recepcja prawa lennego we władztwach biskupich Europy Środkowej* (currently in print).

<sup>91</sup> Marian Ptak, *Własność alodialna i lenna na Śląsku*, [in:] *Kultura prawna w Europie Środkowej*, pp. 96-103.

<sup>92</sup> Georg Bobertag, *Die Gerichte und Gerichtsbücher des Fürstenthums Breslau*, 'Zeitschrift des Vereins für Geschichte und Alterthum Schlesiens', 7 (1866), p. 117.

counterpart it survived slightly longer, but by the mid-15<sup>th</sup> century the institution had been almost completely liquidated. One of the village owners at that time addressed the Bishop with a request to transfer his property to German jurisdiction. He explained that the reason for such a decision was that as Polish law had been almost completely forgotten, it was hard to enforce.<sup>93</sup> At the same time, the changes in the Duchy of Oleśnica went in a different direction – the owners of properties under feudal conditions attempted to transform feudal property into allodial property, and there the institution of *czud* functioned until the 18<sup>th</sup> century.<sup>94</sup>

The aforementioned example presents only one of the aspects of the progressing diversification of judicial institutions observed in the case of individual duchies. The Late Middle Ages brought about interesting particular solutions (i.e. the court of twelve in Świdnica). The concurrence of the names of particular institutions might also be misleading. For instance, the manorial court in Wrocław (*iudicium curiae*) in fact performed the function of the so-called *mański* court, that is the court for the duchy's vassals.<sup>95</sup> On the other hand, the town councillors, which were affiliated as members of an advisory body with the manorial court, debated in the Wrocław Episcopal duchy under the leadership of the *advocatus terrae*.<sup>96</sup> What must be emphasized is that such jurisdictional incoherence could also appear within individual dominions. This practice was followed in the newly incorporated territories (and due to frequent regional divisions was quite common). An excellent example here is the district of Grodków, bought by the Bishops of Wrocław in 1342. Whereas in all other ducal territories the councillors – as we have mentioned above – were an organ of the *advocatus terrae* court, Grodków possessed a traditional manorial court with district council (*Landscheppen*).<sup>97</sup> Maintaining a judicial body independent of the office of governor also seems to have been important. A similar situation occurred in the case of the Góra district, incorporated into the Duchy of Głogów at the end of the 15<sup>th</sup> century. This area gained special status, having its own separate feudal court, *czud* and governor office.<sup>98</sup> This practice most probably resulted from short-term considerations, including the desire to avoid conflict with the local elites of the newly-incorporated region. Maintaining traditional institutions inevitably led to the generation of judiciary particularism. Moreover, the incoherence of the system was enhanced by the existence of a network of ecclesiastic judicial bodies. The Church's property scattered around Silesia was subordinated to the manorial courts of the urban centres of Wrocław, Legnica, Głogów and Ujazd. The court of appeal to their sentences was the court in

<sup>93</sup> *Liber foundationis episcopatus*, p. 25.

<sup>94</sup> Marian Ptak, *Sądy prawa polskiego na tle organizacji wymiaru sprawiedliwości księstwa oleśnickiego XIV-XVIII w.*, Wrocław 1988 (=Acta Universitatis Wratislaviensis, No 946, Prawo 157).

<sup>95</sup> G. Bobertag, *op. cit.*, pp. 118–119.

<sup>96</sup> H. v. Loesch, *Die schlesische Weichbildverfassung*, p. 89.

<sup>97</sup> I.e. *Regesty śląskie*, vol. 2, ed. Waław Korta, Wrocław 1983, Nos 646, 827; *Regesty śląskie*, vol. 3, ed. Waław Korta, Wrocław 1990, No. 31.

<sup>98</sup> Felix Matuszkiewicz, *Die mittelalterliche Gerichtsverfassung des Fürstentums Glogau*, Breslau 1911 (=Darstellungen und Quellen zur schlesischen Geschichte, vol. 13), pp. 130–131.



the Episcopal Duchy of Nysa. This, however, was an infringement of the ducal jurisdiction and could constitute a potential source of jurisdiction-related conflicts.<sup>99</sup>

## Supra-local structures

Powerful processes focused on differentiating the fused administrative and judiciary structures were coupled with activities aiming at supra-local cooperation. The relevant literature distinguishes two types of such connections:

### a) town unions

The cooperation of cities in conducting military and political operations began in central and eastern Europe beginning in the second half of the 13<sup>th</sup> century.<sup>100</sup> The earliest documented example of such cooperation in Silesia is the confederation of towns of the Duchy of Głogów, which was formed in 1310 in order to prosecute outlaws.<sup>101</sup> According to the findings of Kazimierz Orzechowski, cooperation between urban centres was supported by the territorial sovereigns, who saw it as a factor to provide balance and to facilitate the maintenance of order.<sup>102</sup> However, this had particular consequences on the form of Silesian confederations. Almost all the unions of towns known to us involved groups of municipal centres from one political community. Rare cases involved agreements of towns with their counterparts from neighbouring duchies (such as the union of towns of the Duchy of Świdnica and Legnica from 1346).<sup>103</sup> It would not be reasonable to perceive these unions as aiming at introducing a broader unification strategy. Their objectives were short-term, and the territorial horizon was narrowed down to the local community. Nonetheless, they cannot be denied a certain importance in the formation of municipal representations, which played a political role as early as at the close of the Middle Ages.

### b) unions of dukes

Unions of Silesian dukes were of various natures. Confederations created by the members of dynasties generally encompassed the majority of the region, and in some cases included representatives of Moravia and Lusatia. For instance, the *landfryd* of 1387 included 14 Silesian dukes, who entered into an agreement with Margrave Jobst

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<sup>99</sup> These problems are reflected in the argument between Bishop Przeclaw and the Duke of Koźle about the jurisdiction in Gościęcín near Koźle (1365). The duke claimed that the villagers were not entitled to seek advice from priests outside his duchy: 'Item pro requizicione iuris, quod consuetum est a scabinis villanorum in districtibus, quibus iuncti sunt, comparari, pronunciamus, quod antiqua consuetudo iuris provincialis in hoc servari debeat, ut, si villa Constantin ad districtum Cozlensem ab antiquo pertinuerit, ipsius ville inhabitatores merito iura eorum in districtu Kozlensi eo loco, in quo de iure sunt querenda, et non aliunde querere debeant quomodolibet et afferre', H. v. Loesch, *Die schlesische Weichbildverfassung*, p. 90.

<sup>100</sup> Jürgen Karl W. Berns, *Propter communem utilitatem. Studien zur Bündnispolitik der westfälischen Städte im Spätmittelalter*, Düsseldorf 1991.

<sup>101</sup> Kazimierz Orzechowski, *Ogólnośląskie zgrupowania stanowe*, Warsaw 1979, pp. 97–98.

<sup>102</sup> *Ibidem*, pp. 98–99.

<sup>103</sup> *Ibidem*, p. 98.

(Jodocus) of Moravia and Bishop Nicholas of Olomuc.<sup>104</sup> It was frequently political goals and more broadly-undertaken military operations that determined the associations of dukes. The period of intensified union-forming activity is connected with the time of the Hussite Wars, which required the organization of joint military operations. Equally intense collaboration took place in the period of conflicts with George of Poděbrady.<sup>105</sup> Participants in these congresses alongside dukes and knights included the representatives of towns of lands incorporated into the Bohemian Crown which did not have their own ducal representatives. However, the incorporation of feudal duchies occurred very rarely.<sup>106</sup> The 15<sup>th</sup>-century Silesian congresses constituted an unquestionable prototype of the later Silesian Parliament (*sejm*) with respect to its participants, structure and the subject matter of sittings.<sup>107</sup>

## Summary

This synthetic and necessarily abridged study of the most important legal and political issues in the history of medieval Silesia leads us to conclude that of crucial importance for the issues explored was the ‘13<sup>th</sup>-century transformation’ and resultant legislative and political phenomena, including mainly the reception of German jurisdiction and the institution of the self-governing municipality. It cannot be doubted that the most crucial factor determining the functioning of administrative and judicial bodies was a progressing territorial fragmentation, especially from the mid-13<sup>th</sup> century on. In the 12<sup>th</sup> century, what linked Silesia with the remaining part of the monarchy was the office of *comes*. Provincial *comeses* were appointed by the holders of the office of *princeps* and by the Bishops of Wrocław. This situation changed after 1163. The members of Silesian dynasties were rather focusing on their individual interests and forming territorial dominions (only in favourable conditions) which, just as during the reign of Henry the Bearded and Henry IV The Righteous, served the realization of broader, Poland-wide political objectives. Hence the initiatives undertaken to consolidate ducal realms as well as to introduce an effective apparatus for their administration and economic exploitation by means of innovative sociopolitical mechanisms: municipal locations, erection of castles, reforms of both castellan and *weichbild* administration, and promotion of the migration of knights of foreign origin. Another turning point was the process of direct or feudal

<sup>104</sup> Felix Rachfahl, *Die Organisation des Gesamtstaatsverwaltung Schlesiens vor dem dreissigjährigen Kriege*, Leipzig 1894, p. 84.

<sup>105</sup> For the assemblies of Silesian dukes cf. Kazimierz Orzechowski, *Ogólnokrajowe zjazdy na Śląsku przed panowaniem Macieja Korwina*, ‘Czasopismo Prawno-Historyczne’, 24 (1972), pp. 65–67. For the role of the ducal meetings in the Hussite period see the recent publication by Martin Čapský, *Spolek slezských knížat a jeho pokus o společnou obranu jižní hranice Slezska proti husitům (Poznámky k významu a datování grotkovského sněmu)*, [in:] *Ad vitam et honorem. Profesoru Jaroslavu Mezníkovi přátelé a žáci k pětasedmdesátým narozeninám*, eds Tomáš Borovský, Libor Jan, Martin Wihoda, Brno 2003, s. 341–350; *idem*, *Spolek slezských knížat a jeho role v politice Zikmunda Lucemburského (K otázce kontinuity mocenských mechanismů pozdního lucemburského období)*, [in:] *Piastowie śląscy w kulturze*, pp. 221–231.

<sup>106</sup> K. Orzechowski, *Ogólnokrajowe zjazdy*, pp. 74–75.

<sup>107</sup> *Ibidem*, pp. 87–88.

subordination of the Silesian duchies to the Bohemian Crown. The total lack of effort by the Luxembourg dynasty to create any central institutions and lack of engagement in the duchies' internal relations further deepened the institutional differences. The only evidence of unification-focused policies worth mentioning came not on the regional scale, but only in a few individual territorial domains. In this case, however, we can also observe numerous limitations and focus on short-term goals. Striving to unify administrative structures was not a common practice. This is particularly noticeable as far as incorporated territories are concerned. The cases of the districts of Góra and Grodków show that older institutions were maintained even when they differed from those functioning in the remaining parts of the state. Unifying activities were also hindered to a great extent by the instability of the regional divisions. Even if several dukes decided to issue certain regulations to order legal and administrative relations, every subsequent division of the territory could render them null and void.

However, we must acknowledge the function of two crucial integrating forces: one of them the region's participation in a uniform Church structure, and the other its role in a uniform political organism. Those two aforementioned characteristics are of crucial importance in the process of developing a sense of regional community, including in the modern era.

